

Medicine Before the Bench

Findings and Comments of the Courts on Acts and Omissions of Doctors

[EDITOR'S NOTE—*The law reports contain many interesting decisions, involving the reputations and fortunes of doctors. In this column in each issue a brief summary of one or more decisions and comments of the several courts of last resort upon the cases will appear. The matter will be selected by our general counsel, Hartley F. Peart, who, with Mr. Hubert T. Morrow, attorney for Southern California, will contribute from time to time.*]

The liability of a physician for the performance of an unauthorized operation upon a patient was involved in a decision wherein the Supreme Court refused to reverse the judgment and verdict of the jury in favor of the plaintiff and against the physician for \$14,332.50. It appeared from the evidence that plaintiff consulted her physician with reference to a perforation in the lower portion of the drum membrane in her right ear, and a large polyp in the middle ear. An operation was advised and plaintiff consented to this operation and was placed under an anesthetic for that purpose. After the plaintiff was anesthetized the defendant made a thorough examination of her left ear and found it in a more serious condition than her right one. The physician then decided to operate upon the left ear instead of the right, the operation being successfully and skillfully performed. Plaintiff claimed that the operation greatly impaired her hearing, seriously injured her person, and, not having been consented to by her, was wrongful and unlawful, constituting an assault and battery.

Upon appeal, in refusing to reverse the verdict of the jury against the doctor, the court quoted, with approval, the language of a former decision, wherein a physician was held to have wrongfully removed the ovaries of a patient, saying:

"Under a free government, at least, the free citizen's first and greatest right, which underlies all others—the right to the inviolability of his person; in other words, the right to himself—is the subject of universal acquiescence, and this right necessarily forbids a physician or surgeon, however skillful or eminent, who has been asked to examine, diagnose, advise, and prescribe (which are at least necessary first steps in treatment and care), to violate, without permission, the bodily integrity of his patient by a major or capital operation, placing him under an anesthetic for that purpose and operating upon him without his consent or knowledge. . . . The patient must be the final arbiter as to whether he will take his chances with the operation, or take his chances of living without it. Such is the natural right of the individual, which the law recognizes as a legal one. Consent, therefore, of an individual, must be either expressly or impliedly given before a surgeon may have the right to operate. There is logic in the principle thus stated, for, in all other trades, professions, or occupations, contracts are entered into by the mutual agreement of the interested parties, and are required to be performed in accordance with their letter and spirit. No reason occurs to us why the same rule should not apply between physician and patient. If the physician advises his patient to submit to a particular operation, and the patient weighs the dangers and risks incident to its performance, and finally consents, he thereby, in effect, enters into a contract authorizing his physician to operate to the extent of the consent given, but no further. . . . The medical profession has made signal progress in solving the problems of health and disease, and they may justly point with pride to the advancements made in supplementing nature and correcting deformities, and relieving pain and suffering. . . . The methods of treatment are committed almost exclusively to the judgment of the physician, but we are aware of no rule or principle of law which would extend to him free license respecting surgical operations. . . ."

The Gorgas Memorial—Medical editors have been asked by the executive committee of the Gorgas Memorial to publish a lengthy appeal for support of the movement. In addition to what has already been repeatedly published, the document states that, "inasmuch as the Gorgas Memorial is primarily a medical movement, it must have the united support of the profession if it is to make the proper impression on the general public."

The directors announce the very praiseworthy idea to make of the General William Crawford Gorgas Memorial "not one of marble or bronze," but a permanent living organization in the form of a great health foundation typical of his work in "research and curative medicine."

We presume that Gorgas' really great work in preventive medicine was accidentally omitted from the publication.

"If the medical profession is to maintain the high standing to which centuries of labor in behalf of suffering mankind entitles it, it is essential that a definite organized effort be made to familiarize the public with such facts as will impress upon it the importance of medicine's contributions to human welfare.

"One of the objects of the Gorgas Memorial is to furnish a channel through which 'better health' information may be disseminated. This, says the committee, 'cannot be done by individual physicians. It must be conducted by a dignified, ethical organization, controlled by the medical profession. The name of Gorgas is synonymous with 'better health.' No more appropriate name could be adopted for a movement that has for its object the development of co-operation between the public and scientific medicine for the purpose of improving health conditions by implanting the idea in the mind of every individual that scientific medicine is the real authority in all health matters, and as such should be recognized as the source of health instruction."

California physicians will appreciate such an endorsement of both an idea and a name under which they have conducted for years a magazine (Better Health); a syndicated newspaper service (Better Health Service) and have for longer years conducted a better health crusade for every citizen we could reach.

Our physicians will feel that it is rather late for any organization to be talking of "adopting" the name Better Health, already well established and protected by priority, usage and law.

"Every doctor is requested by the governing board to take a personal interest in the Gorgas program and to see that his community is adequately represented on the state governing committee. Those invited to serve as founder members of the state governing committees are requested, as they accept membership on the committee, to subscribe \$100 to the Endowment Fund, payable within two years."

The organization is controlled by a large board made up of physicians, government officials, and laymen. Doctor Franklin Martin of Chicago is chairman of the board and Doctor Ray Lyman Wilbur of California appears to be the one representative of Western America.

"Many persons think that education is something that we may give a child," says Angelo Patri (Liberty). "No power on earth can do that. Education is something that a child must take. He takes it up from the earth and transforms it into intelligence by the experiences that he gathers through his nerves and muscles—and his hands."

"We have one United States Senator who believes Mrs. Eddy was a deity," says J. E. Dildy (Texas Medical Journal). "The banker carries an Irish potato for rheumatism; the congressman signs the Tanlax ad, while the legislator votes for the chro and 'totes' buckeyes for piles."

"The doctors of a community can tell the people what to do in order to prevent disease, but they are powerless to enforce their advice," says the Long Island Medical Journal.